

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Xiaqjun Wang,

Plaintiff,

v.

John Doe and 445.com

Defendants.

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Case No. 1:21-cv-00377

Motion to Dismiss for Lack of Jurisdiction
or, in the alternative to transfer Venue

Comes Now Richard Blair, by Counsel appearing by Special Appearance to dispute jurisdiction, and files this Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(3) or, in the alternative, to transfer venue as more fully supported by the memorandum of law filed herewith.

The Plaintiff before the Court is proceeding exclusively *in rem* pursuant to the Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d). See Complaint, dkt 1, page 1. The ACPA permits proceeding *in rem* only where the Plaintiff is unable to obtain *in personam* jurisdiction over a defendant in a civil matter and where the Plaintiff has, through due diligence, been unable to find a person to be a defendant. See 15 U.S.C. § 1125(d)(2)(C). Where, as here, there the true owner of the domain name who is subject to *in personam* jurisdiction in a U.S. Court is identified, there is no subject matter jurisdiction to proceed *in rem*.

Should the Court find there is subject matter jurisdiction, the matter should be transferred to the Northern District of California as the true owner of the subject domain, Richard Blair, a citizen of the United Kingdom, resides in Walnut Creek, California. See Declaration of Richard Blair.

Wherefore it is respectfully requested that this Court dismiss this matter pursuant to Federal Rule of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(3), or, in the alternative, transfer venue to the U.S. District Court for the Northern District of California.

Dated: May 7, 2021

/s

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May, 2021 I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/s

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